

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ROBERT PICKARD, *et al.*,

Plaintiffs,

v.

SEARS, INC.,

Defendant.

CASE NO. C05-0674RSM

ORDER STRIKING PLAINTIFF'S  
THIRD AMENDED COMPLAINT

On June 15, 2006, plaintiff moved to file a Third Amended Complaint adding the Taiwanese manufacturer of the saw at issue in this case, TOTY d/b/a Chang Type Industrial Corp., Ltd. (Dkt. #21). The Court granted the motion, and directed plaintiff to file the Third Amended Complaint no later than three days from the date of that Order. (Dkt. #22). Plaintiff failed to file the amended complaint.

On September 20, 2006, plaintiff again moved to file a Third Amended Complaint adding the Taiwanese manufacturer of the saw at issue in this case, TOTY d/b/a Chang Type Industrial Corp., Ltd. (Dkt. #29). The Court struck that motion from the record as moot, noting that it was identical to the motion previously filed and granted. (Dkt. #30).

On December 21, 2006, plaintiff filed a Third Amended Complaint. (Dkt. #41). However, unlike the proposed Third Amended Complaint reviewed and previously accepted by this Court,

1 plaintiff's current Third Amended Complaint not only adds defendant TOTY d/b/a Chang Type  
2 Industries Corp., Ltd., it also purports to add Ryobi Technologies as a defendant to this action.  
3 Prior to filing that Third Amended Complaint, plaintiff had never requested leave to add Ryobi as a  
4 defendant.<sup>1</sup>

5 Accordingly, the Court hereby ORDERS:

6 (1) The Court *sua sponte* STRIKES plaintiff's Third Amended Complaint (Dkt. #41) from  
7 the record. Once an Answer or other responsive pleading has been filed by the defendant, Federal  
8 Rule of Civil Procedure 15(a) requires leave by the Court or acquiescence by the other parties prior  
9 to the filing of an Amended Complaint. With respect to Ryobi Technologies, no such permission has  
10 been granted by this Court or by any defendant. Accordingly, plaintiff's Third Amended Complaint  
11 was improperly filed, and will not be considered by this Court. Plaintiff's pending motion to amend  
12 remains on this Court's calendar for consideration on February 16, 2007.

13 (2) The Clerk shall forward a copy of this Order to all counsel of record.

14 DATED this \_6\_ day of February, 2007.

15 

16 RICARDO S. MARTINEZ  
17 UNITED STATES DISTRICT JUDGE  
18  
19  
20  
21  
22  
23  
24

---

25 <sup>1</sup> More than one month later, on January 29, 2007, plaintiff moved to amend his complaint to add  
26 Ryobi Technologies as a defendant. That motion is currently noted for consideration on February 16,  
2007, and has not yet been reviewed by the Court.